



**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:	)	
	)	
JAMES NELSON,	)	
	)	
Complainant,	)	
	)	Charge No.: 1996CP2029
and	)	EEOC No.: N/A
	)	ALS No.: 9539
EMRO MARKETING COMPANY,	)	
	)	
	)	
Respondent.	)	

**RECOMMENDED ORDER AND DECISION**

A Recommended Liability Determination (RLD) was entered in this matter on October 11, 2000. Pursuant to the RLD, Complainant, James Nelson, filed a timely written motion for attorney's fees. Respondent, Emro Marketing Company, filed a timely written response to that motion. Complainant then filed a reply to the response, but he did not have leave to file it and the reply was not read or considered in ruling on the motion. The matter is now ready for decision.

**FINDINGS OF FACT**

1. Complainant has requested compensation for 298 hours of work by attorney Paul E. Kelly, 97.4 hours of work by attorney Joshua D. Johnson, 2.7 hours of work by attorney William J. Leonard, and 1.5 hours of work by attorney David L. King.

2. Complainant is requesting a rate of \$175.00 per hour

for all time worked by Kelly, Johnson, Leonard, and King.

3. The requested hourly rate is quite reasonable and should be accepted.

4. The requested number of hours is excessive. The number of hours should be reduced by 20%, to 319.68.

5. Complainant seeks compensation for 9.5 hours of law clerks' time at \$87.50 per hour. The requested rate is reasonable, but the number of hours should be reduced to 4.5.

6. Complainant seeks a 1.5 multiplier on the attorney's fee award.

7. Complainant seeks reimbursement for \$1,616.68 in costs incurred in prosecuting this matter.

8. The compensable costs total \$1,416.68.

#### CONCLUSIONS OF LAW

1. Because he never had leave to file it, Complainant's reply memorandum is stricken, *sua sponte*.

2. Use of a multiplier to increase the attorney's fee award is not justified in this case.

#### DISCUSSION

Complainant, James Nelson, has requested an award of \$106,141.88 in attorney's fees, including a 1.5 multiplier. In addition, he has requested reimbursement for \$1,616.68 in costs. Respondent, Emro Marketing Company, objects to the size of the fee request. Specifically, Respondent asserts that the number of requested hours is excessive, that a multiplier is inappropriate

in this case, and that the documentation of the claimed costs is inadequate.

The proper approach to a motion for attorney's fees is set forth in *Clark and Champaign National Bank*, 4 Ill. HRC Rep. 193 (1982). Under the *Clark* approach, the first thing to do is to determine the appropriate hourly rate for the attorney's work. The next step is the determination of the number of hours reasonably expended on the case. Finally, it is necessary to decide if any additional adjustments should be made to the fee award.

Complainant seeks an rate of \$175.00 per hour for his attorneys' work. Respondent does not contest that rate and, given the substantial work experience of the attorneys involved, the requested rate is eminently reasonable.

Despite that agreement on the hourly rate, there is strong disagreement about the requested number of hours. Complainant is seeking compensation for 399.6 hours of his attorneys' time. Respondent maintains that the requested number is extravagantly inflated.

Respondent goes so far as to suggest that the fee petition should be denied in its entirety because of the large number of requested hours. That suggestion, though, should be rejected out of hand, since there is no indication that the hours were in any way fraudulent or intentionally inflated.

On the other hand, it is difficult to justify an award of

fees for nearly 400 hours of attorneys' work for a hearing that lasted only a day and a half. Moreover, as Complainant himself points out in his motion, the current attorneys did not get involved in the case until February of 1999, nearly two and a half years after the complaint was filed.

In fairness, it should be noted that (at least from Complainant's standpoint) very little was done on this case during the first two and a half years after the complaint was filed. Although Complainant was represented during some of that time, that representation appears to have been something less than zealous. The current attorneys had to make up ground to accomplish much of what should have been done before that point. Nonetheless, the requested number of hours simply is too large for a case of this size and complexity.

There are some fairly basic cuts that can be made off the top of the request. Those, however, are few. Complainant requests compensation for 9.5 hours of law clerks' time. Respondent argues that none of the clerks' time should be compensated because of inadequate documentation. Adopting Respondent's argument would be too harsh, since the existing documentation is sufficient to justify a reasonable award. However, 5.0 hours of the requested time is for tasks such as filing, copying, and delivering items. A paralegal or law clerk's time is compensable only when the work performed is of the type typically performed by an attorney. **Matejewski and**

**State of Illinois, Dep't of Corrections, Pontiac Correctional Center**, 22 Ill. HRC Rep. 184 (1986). Thus, 5.0 hours of the requested law clerks' time must be deducted from the award. The total deduction is \$437.50, leaving a total of \$393.75.

The attorneys' time is another matter. There are no time entries which obviously can be eliminated. The duties described in the entries are all among the types of duties for which attorney's fees can be awarded. Respondent argues that the time spent on such "ministerial" tasks as the acquisition of medical records should be eliminated or compensated at a lower hourly rate. On the facts of this case, though, such a solution is not recommended. Complainant is not represented by a large law firm which has a support staff which can handle such "ministerial" tasks. In smaller firms, such duties often are handled by attorneys. Denying compensation for such duties unfairly hurts complainants, since they are the parties most often represented by smaller firms. As a result, there is no recommendation for specific cuts of attorneys' time based on the type of duties performed during that time.

On the other hand, as noted above, the total number of requested hours is too high to justify, given the length of the hearing and the complexity of the issues in the case. With one exception, the issues addressed in this action were quite routine. That one exception involved the aggravation of Complainant's schizo-affective disorder. Certainly, that medical

issue was a key matter which greatly affected the findings related to damages. However, it is not an issue which justifies an unduly high fee award.

When considering attorney's fee petitions, doubts are to be resolved in favor of the respondent. ***Lieber and Southern Illinois Univ. Bd. of Trustees***, 34 Ill. HRC Rep. 206 (1987). In light of that admonition, it is recommended that the requested hours be reduced by 20%. The resulting number, 319.68, is still toward the high end of the justifiable range. Still, in light of the rather modest hourly rate and the level of Complainant's success in the case, it should provide reasonable compensation. Multiplying the recommended hourly rate by the recommended number of hours leaves a figure of \$55,944.00.

In addition, there is the matter of a \$400.00 retainer paid by Complainant to Alonzo Zahour, the attorney who represented Complainant during an earlier phase of the case. Zahour's participation in the case was negligible, at best. There is little evidence in the record to indicate that he performed any significant legal work on Complainant's behalf. Nonetheless, there is no doubt that Complainant paid him \$400.00, and hiring an attorney certainly was a reasonable thing to do at the time. Therefore, it is recommended that Complainant be reimbursed for his \$400.00 payment. Adding that amount plus the law clerks' fees to the earlier fee amount makes a total of \$56,737.75. That is the recommended attorney's fee award.

Complainant has requested a fee multiplier of 1.5, but that request should be denied. Complainant's attorneys did a solid, professional job of representation, with good results. Certainly their work was, as the fee petition states, "beyond adequate." However, adequacy is not the standard against which the advisability of a multiplier is measured. To justify a multiplier, the record must reflect "exceptional circumstances," such as unique and difficult issues. **Podgurski and Rackow**, 11 Ill. HRC Rep. 55 (1984), *aff'd sub nom Rackow v. Illinois Human Rights Commission*, 152 Ill. App. 3d 1046, 504 N.E.2d 1344 (2d Dist. 1987). As the Commission stated in **Podgurski**, "A multiplier is not justified in every case where the attorney's presentation is exceptionally good." 11 Ill. HRC Rep., at 58. This is not the exceptional case which justifies a multiplier. There is no need to adjust further the recommended fee award.

Complainant also has requested reimbursement for \$1,616.68 in costs incurred in prosecuting this matter. Respondent has objected to any award of costs, largely on the basis of inadequate documentation. The documentation objection should be overruled, but there are some claimed costs which should not be reimbursed.

There is a request for \$200.00 for work by Dr. Benezra, but there is no indication anywhere in the record of who Dr. Benezra is or what he did to advance Complainant's cause. That requested cost should be denied. The remainder of the requested costs

appear to be reasonable and compensable. It is recommended that Complainant be reimbursed for those compensable costs in the amount of \$1,416.68.

RECOMMENDATION

Based upon the foregoing, it is recommended that an order be entered awarding Complainant the following relief:

A. That Respondent be ordered to pay to Complainant the sum of \$56,737.75 for attorney's fees reasonably incurred in the prosecution of this matter;

B. That Respondent be ordered to pay to Complainant the sum of \$1,416.68 for costs reasonably incurred in the prosecution of this matter;

C. That Complainant receive all other relief recommended in the Recommended Liability Determination entered in this matter on October 11, 2000.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL J. EVANS  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: January 11, 2001